

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 90-395-T - ORDER NO. 91-503 ✓
JUNE 20, 1991

IN RE: Application of Robert E. Brizendine,)
Trustee of the Bankrupt Estate of Brown)
Transport Truckload, Inc., 125 Milton) ORDER
Avenue, SE, Atlanta, GA. 30315, to Transfer)
Class E Certificate of Public Convenience)
and Necessity No. 8023 to Averitt Express,)
Inc., 518 Old Kentucky Road, P. O. Box 3166,)
Cookeville, TN 38501-3166.)

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of an Application filed by Robert E. Brizendine, Trustee of the Bankrupt Estate of Brown Transport Truckload, Inc. (the Transferor; Brown), whereby the Transferor seeks certain relief in the nature of approval of the transfer of its Certificate of Public Convenience and Necessity to Averitt Express, Inc. (the Transferee; Averitt). Subsequent to the initiation of this proceeding, the Commission Staff instructed the Transferor to cause to be published a prepared Notice of Filing in certain newspapers of general circulation in the State of South Carolina. The Notice of Filing indicated the nature of the Application and advised all interested parties desiring to participate in the proceeding of the manner and time in which to file the appropriate pleadings. Petitions to Intervene were filed on behalf of Southeastern Freight Lines, Inc., Spartan Express,

Inc., and Greenwood Motor Lines, Inc. A public hearing was held on February 27, 1991 at 10:30 a.m. in the Hearing Room of the Commission at 111 Doctors Circle, Columbia, South Carolina. The Honorable Marjorie Amos-Frazier presided. Arthur G. Fusco, Esquire, and Robert L. Baker, Esquire, represented the Transferor, F. Lee Prickett, Jr., Esquire, and John Felder, Esquire, represented Southeastern Freight Lines, Inc., and Marsha A. Ward, Esquire, represented the Commission Staff.

The Transferor presented the testimony of Gary Sasser. Southeastern Freight Lines, Inc. presented the testimonies of John Rader and Robert Zuelsdorf in support of its position.

In order for the Commission to approve the transfer, the Commission must find and conclude that the requirements of Commission Regulation 103-136 have been satisfied. R.103-136 provides in pertinent part that:

The Commission shall approve an application for... sale or transfer of a certificate made under this section upon finding (1) that sale... will not adversely affect the service to the public under said certificate, (2) that the person acquiring said certificate... is fit, willing and able to perform such service to the public under said certificate, and (3) that all services under said certificate have been continuously offered and reasonably provided to the public for a period of time not less than twelve (12) months prior to the date of the filing of the application for approval of the sale...

If the application does not contain evidence that the authorized services have been continuously offered and reasonably provided to the public for a period of time not less than twelve (12) months prior to the date of the filing of the application, the application may be denied if an intervenor shows, or if the Commission determines, that public convenience and necessity is already being served.

The application of the transferor dated May 21, 1990, shows by accompanying exhibits that authorized service was provided by the Company only up to and including September 25, 1989. Further, the Intervenor alleged during the hearing through the testimony of its witness Zuelsdorf that public convenience is already being served at the present time.

Upon consideration of the evidence in the record, the Commission makes the following findings and conclusions:

1. The current authority of Brown Transport Truckload, Inc. is a Class E Certificate for the transportation of commodities in general, with the usual exceptions, between points and places in South Carolina.

2. That Averitt Express, Inc. holds nationwide, general commodity authority, as a common and contract carrier, issued by the ICC in Docket No. MC-121600 and subsidiary dockets thereto.

3. That Averitt Express, Inc. has approximately 2,500 employees and 3,200 units of equipment operating in 47 service centers (terminals) throughout the Southeast and Midwest United States.

4. That according to the application, the last shipment of goods by the Transferor was on September 25, 1989.

5. That according to the Commission's records, Transferor sought a suspension of its Class E authority on January 26, 1990 and was granted the suspension for one year by Order No. 90-128, said suspension ending on January 26, 1991.

6. Based on the application of the Transferor and a review

of the Commission files, the Commission finds and concludes that service to the public has not been continuously offered and reasonably provided by the Transferor Brown for a period of not less than twelve (12) months prior to the date of the filing of the application and in fact said service ceased on or about September 25, 1989.

7. Rule 103-136 (4) states that the issue of public convenience and necessity must be addressed where the provisions of subsection (3) of the above Rule are not met, i.e. where there has not been compliance with the requirement of twelve (12) months service prior to the application. This provision does apply to this application. Therefore, the Commission concludes that the issue of public convenience and necessity needs to be addressed in the present case.

8. The testimony of Southeastern's witness Zuelsdorf addressed this issue. Zuelsdorf presented a survey of South Carolina shippers and receivers of less-than-truckload freight intrastate in South Carolina. (Hearing Exhibit 7) This study was prepared by witness Zuelsdorf as part of his duties with Wilbur Smith Associates. Zuelsdorf conducted a survey of three-hundred thirteen (313) randomly selected South Carolina businesses. These were randomly sampled by business type, business size, and business location. A telephone survey was conducted, whereby seventeen (17) questions were propounded to each business. The survey questions were related to shippers'/receivers' views of less-than-truckload carriers, levels of service received, and satisfaction or

dissatisfaction with the existing services. Responses were received from virtually every county in South Carolina.

With regard to those who responded to the survey, over ninety percent (90%) of the businesses used one or two less-than-truckload common carriers for intrastate shipping purposes. Apparently, according to the survey, shippers/receivers find one or two carriers that provide good service and use them. The Zuelsdorf survey shows that there are ample intrastate less-than-truckload motor carriers from which to choose. Further, ninety-six and one-half percent (96.5%) of the South Carolina shippers/receivers surveyed believe that they get good or excellent service from the existing carriers. In addition, existing carriers in South Carolina seem to have an excellent service record, and ninety-three and three-tenths percent (93.3%) of those surveyed indicated that less-than-truckload carriers are good or excellent in handling complaints. Further, trucking capacity at present appears to be readily available. Three-hundred twelve (312) out of three-hundred thirteen (313) businesses indicated in the survey that their intrastate less-than-truckload service needs are being met with existing carriers.

9. Based on the testimony and survey of witness Zuelsdorf, the Commission concludes that public convenience and necessity is already being served, since there does not appear to be a real need for an additional commodities carrier.

10. That there is considerable competition existing in the intrastate commodities carrier market.

11. That the nature of the South Carolina intrastate market for transportation of commodities is such that any additional motor carrier entrant would necessarily deprive one or more certificated carriers of market share and the attendant revenue.

12. That this deprivation would pose a substantial threat to the operations of carriers whose traffic and revenue would be diverted.

13. That this interest is best served by giving due regard to the operational health and viability of those certified intrastate motor carriers which have already done what is necessary to establish themselves in such a position as to enable them to render satisfactory service to the public, and have maintained such service in satisfaction of the public's need.

14. Having made these findings and having reached this conclusion, the Commission need not address other matters raised on cross-examination by the parties.

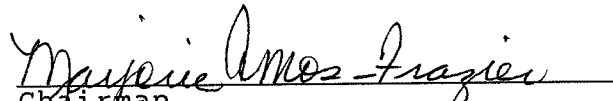
Based on the above-stated findings, the Commission concludes that the Application for transfer must be denied.

IT IS THEREFORE ORDERED:

1. That the proposed transfer of Certificate of Public Convenience and Necessity No. 8023 from Robert E. Brizendine, Trustee of the Bankrupt Estate of Brown Transport Truckload, Inc. to Averitt Express, Inc. is denied on the basis that the public convenience and necessity is already being served.

2. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)